

House File 490 - Introduced

HOUSE FILE 490
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 27)

A BILL FOR

1 An Act creating a certificate of merit affidavit in a medical
2 malpractice action.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 147.140 Expert certificate of merit
2 affidavit — health care providers — requirements.

3 1. For purposes of this section, "*health care provider*"
4 means a physician or surgeon, osteopathic physician or
5 surgeon, dentist, podiatric physician, optometrist, pharmacist,
6 chiropractor, physician assistant, or nurse licensed in this
7 state, a hospital licensed pursuant to chapter 135B, or a
8 health care facility licensed pursuant to chapter 135C.

9 2. *a.* In any action for personal injury or wrongful
10 death against any health care provider based upon the alleged
11 negligence of the licensee in the practice of that profession
12 or occupation, or upon the alleged negligence of the hospital
13 or health care facility in patient care, which includes a cause
14 of action for which expert testimony is necessary to establish
15 a prima facie case, the plaintiff shall, within one hundred
16 eighty days of the defendant's answer, serve upon the defendant
17 an expert's certificate of merit affidavit for each expert
18 listed pursuant to section 668.11 who will testify with respect
19 to the issues of breach of standard of care or causation.

20 *b.* Each certificate of merit affidavit must be signed by
21 the expert. The affidavit must certify the purpose for calling
22 the expert by providing under the oath of the expert all of the
23 following:

24 (1) The expert's statement of familiarity with the
25 applicable standard of care.

26 (2) The expert's statement that the standard of care was
27 breached by the health care provider named in the petition.

28 (3) The expert's statement of the actions that the health
29 care provider should have taken or failed to take to have
30 complied with the standard of care.

31 (4) The expert's statement of the manner by which the breach
32 of the standard of care was the cause of the injury alleged in
33 the petition.

34 *c.* A plaintiff shall serve a separate affidavit on each
35 defendant named in the petition.

1 *d.* Answers to interrogatories may serve as an expert's
2 certificate of merit affidavit in lieu of a separately executed
3 affidavit if the interrogatories satisfy the requirements of
4 this subsection and are signed by the plaintiff's attorney and
5 by each expert listed in the answers to interrogatories and
6 served upon the defendant within one hundred eighty days of the
7 defendant's answer.

8 3. The expert's certificate of merit affidavit does not
9 preclude additional discovery and supplementation of the
10 expert's opinions in accordance with the rules of civil
11 procedure.

12 4. The parties by agreement or the court for good cause
13 shown and in response to a motion filed prior to the expiration
14 of the time limits specified in subsection 2 may provide
15 for extensions of the time limits specified in subsection
16 2. Good cause shall include the inability to timely obtain
17 a plaintiff's medical records from medical providers when
18 requested prior to filing suit and not produced.

19 5. If the plaintiff is acting pro se, the plaintiff shall
20 sign the affidavit or answers to interrogatories referred to
21 in this section and shall be bound by those provisions as if
22 represented by an attorney.

23 6. *a.* Failure to comply with subsection 2 shall result,
24 upon motion, in dismissal with prejudice of each cause of
25 action as to which expert testimony is necessary to establish a
26 prima facie case.

27 *b.* A written notice of deficiency may be served upon the
28 plaintiff for failure to comply with subsection 2 because of
29 deficiencies in the affidavit or answers to interrogatories.
30 The notice shall state with particularity each deficiency of
31 the affidavit or answers to interrogatories. The plaintiff
32 shall have fourteen days to cure the deficiency. Failure to
33 comply within the fourteen days shall result, upon motion, in
34 mandatory dismissal with prejudice of each action as to which
35 expert testimony is necessary to establish a prima facie case.

1 A party resisting a motion for mandatory dismissal pursuant to
2 this section shall have the right to request a hearing on the
3 motion.

4 EXPLANATION

5 This bill relates to the filing of a certificate of merit in
6 a medical malpractice action.

7 The bill provides that in any action for personal injury
8 or wrongful death against any health care provider based upon
9 negligence, which includes a cause of action for which expert
10 testimony is necessary to establish a prima facie case, the
11 plaintiff is required, within 180 days of the defendant's
12 answer, to serve the defendant with an expert's certificate
13 of merit affidavit for each expert listed who is expected to
14 testify with respect to the issues of breach of standard of
15 care or causation.

16 The bill provides that each certificate of merit affidavit
17 must be signed by the expert and include the expert's statement
18 of familiarity with the applicable standard of care, the
19 expert's statement that the standard of care was breached by
20 the health care provider named in the petition, the expert's
21 statement of the actions that the health care provider should
22 have taken or failed to take to have complied with the standard
23 of care, and the expert's statement of the manner by which the
24 breach of the standard of care was the cause of the injury
25 alleged in the petition.

26 The bill provides that a plaintiff shall serve a separate
27 affidavit on each defendant named in the petition and that
28 answers to interrogatories may serve as an expert's certificate
29 of merit affidavit in lieu of a separately executed affidavit
30 if the interrogatories satisfy the requirements previously
31 noted and are signed by the plaintiff's attorney and by each
32 expert listed in the answers to interrogatories and served upon
33 the defendant within 180 days of the defendant's answer.

34 The bill provides that a certificate of merit affidavit
35 does not preclude additional discovery and that the parties by

1 agreement or the court for good cause shown may provide for
2 extensions of the time limits provided in the bill. If the
3 plaintiff is acting pro se, the plaintiff is required to sign
4 the affidavit or answers to interrogatories and shall be bound
5 by those provisions as if represented by an attorney.

6 The bill provides that failure to comply with the
7 requirements of the bill shall result, upon motion, in
8 dismissal with prejudice of each cause of action as to which
9 expert testimony is necessary to establish a prima facie case.
10 A written notice of deficiency may be served upon the plaintiff
11 for failure to comply with the requirements of the bill because
12 of deficiencies in the affidavit or answers to interrogatories.
13 The plaintiff shall have 14 days to cure the deficiency and
14 failure to comply within the 14 days shall result, upon motion,
15 in mandatory dismissal with prejudice of each action as to
16 which expert testimony is necessary to establish a prima facie
17 case. A party resisting a motion for mandatory dismissal under
18 the bill has the right to request a hearing on the motion.

19 For purposes of the bill, "health care provider" means
20 a physician or surgeon, osteopathic physician or surgeon,
21 dentist, podiatric physician, optometrist, pharmacist,
22 chiropractor, physician assistant, or nurse licensed in this
23 state, a hospital licensed pursuant to Code chapter 135B, or a
24 health care facility licensed pursuant to Code chapter 135C.